

ORDER:

This petition under Article 227 of Constitution of India is filed by the revision petitioners/defendants 1 to 3 aggrieved by the order, dt.27.09.2016 in I.A.No.528 of 2016 in O.S.No.39 of 2016 on the file of the Principal Senior Civil Judge, Mancheri dismissing the application under Order VII Rule 11 of CPC r/w 151 CPC to reject the plaint.

2. The petitioners are the defendants 1 to 3 in the suit and filed an application under Order VII Rule 11 of CPC to reject the plaint on two grounds; the first ground is that the averments in the plaint are baseless and false. The plaintiffs are neither the owners nor the possessors of the suit land and that the date of purchase and date of delivery of possession was not disclosed in the entire plaint and the basic links of transfer of suit land is totally absent except filing panianies to set aside and to prove their case. Therefore, there is absolutely no cause of action for the suit. It is also contended that the unregistered sale deed i.e. simple sale is inadmissible in evidence, thereby the plaint shall not be registered, but the trial Court though registered the plaint cannot proceed and try the suit. The second ground is that the suit claim is barred by limitation. Therefore, the plaint is liable to be rejected on two grounds viz; plaint does not disclose any cause of action and that the claim is barred by limitation.

3. The respondents/plaintiffs filed counter contending that the plaint disclose cause of action and the cause of action pleaded in the plaint is true or not the question to be decided under Order VII Rule 11 CPC, apart from that the plaint is within time and therefore, the plaint cannot be rejected under clause (a) or (b) of Order VII Rule 11 of CPC and prayed for dismissal.

4. The trial Court upon hearing the arguments of both the counsel, passed the order under challenge, dismissing the application filed under Order VII Rule 11 CPC.

5. Aggrieved by the said order, the present revision is filed reiterating the grounds urged before the trial Court and mainly contending that cause of action shown in the plaint is illusory and on the basis of such cause of action, the suit cannot be tried and decided since it is nothing but waste of time of court and parties, that apart the suit claim is barred by limitation and therefore, by exercising power under sub-clause (a) and (b) under Order VII Rule 11 of CPC, the plaint shall be rejected and prayed to set aside the order allowing the revision.

6. During hearing, the learned counsel for the petitioners reiterated the contentions raised before the court and mainly on the ground that in the absence of any document based on simple sale deed which has not seen the light of the day, the suit cannot be proceeded further and the suit plaint can be rejected at any time and that the claim of the plaintiffs is barred by limitation and prayed to set aside the order under challenge and reject the plaint allowing I.A.No.528 of 2016 in O.S.No.39 of 2016. He placed reliance on two decisions: (1) OM AGGARWAL v HARYANA FINANCIAL CORPORATION AND OTHERS¹, (2) IPED INC. AND OTHERS v. KAY BEE ENGINEERS AND ANOTHER².

7. As seen from the plaint, the respondents' ancestors purchased the property under simple sale deed and later the name was mutated in revenue records and continuing in possession and enjoyment of the property. They filed suit for declaration of title and recovery of possession of the suit land bearing Sy.No.198 (old 4/22), admeasuring Ac.05.55 cents

¹2015(3) ALT53 (SC)

²AIR 2016 GUJARAT 104

and Sy.N.203 (old 4/22) admeasuring Ac.0.43 cents, thus the total extent comes to Ac.5.98 cents in one compact bit, situated at Vellapalli village of Jaipur mandal, Adilabad District and to direct the defendants to deliver the possession of the aforesaid suit land. Thus, the suit is filed both for declaration of title and recovery of possession and the specific allegation is that the property was purchased by ancestors under simple sale deed and later he filed declaration in CC No.C/1296/1975 and also recorded the statement of late Elaiah and later declared the standard holding of the ancestors of the petitioners. But, the defendants illegally occupied the suit land mentioned supra and they are bound to redeliver the possession of the property.

8. The main contention of the petitioners is that the plaint does not disclose any cause of action and even if any cause of action is disclosed, it is neither true nor correct. While deciding the petition under Order VII Rule 11 CPC, at best the court is required to verify entire plaint and find out whether plaint disclosing cause of action but not true or otherwise of the cause of action mentioned in the plaint. Therefore, the court cannot decide the truth or otherwise in the allegation made in the plaint, more particularly, with regard to the cause of action. Cause of action is a bundle of facts and it is nothing but a fact which gives rise to file a suit claiming right or title in the property. In the present case, the cause of action for the suit arose when property was purchased under simple sale deed by ancestors of the respondents/plaintiffs and later the petitioners herein and where the defendants illegally occupied the suit land mentioned supra without any right. Therefore, these two incidents would give rise the cause of action, but mere non production of document which they relied on referred in the plaint is not sufficient to reject the plaint since the plaint disclose cause of action. The learned counsel while contending that the plaint is liable to be rejected as the plaint does not

disclose cause of action and placed reliance on the decision in OM AGGARWAL 1st cited *supra* wherein the Apex Court at para 22 held as under:

“The question as to whether a suit is barred by any law or not would always depend upon the facts and circumstances of each case. However, for deciding this question, only the averments made in the plaint are relevant. Since the question of jurisdiction of the Civil Court to entertain and try the civil suit goes to the very root of the case and hence it can be raised at any time by the defendant by taking recourse to the provisions of Order VII Rule 11 of the Code.”

9. But, this judgment has no application to the present facts of the case as the facts of the above judgment are under Clause (d) of Order VII Rule 11 CPC, but not under Clause (a). Similarly, he placed another reliance on IPEG INC. (2nd cited *supra*) in paras 37 and 38 of the judgment, it is held as follows:

37. The submission, of the learned counsel for the respondents requires justification, that the appellants have no clear right to sue, for the alleged copyright. The suit based on such false claim, is nothing but a clear case of "abuse of the process of law" and the appellants have not disclosed "a clear right to sue" and also not disclosed "the real cause of action". As per the averments of the plaint and the documents relied on by the appellants, the appellants have obtained the same artistic work under Patent-Design in USA. It is submitted that the Design being a territorial right, its registration in India is must and mandatory under the provision of Section 44 of the Designs Act, 2000. The appellants are not having any registration of Design under the Indian Design Act. The appellants have deliberately and wrongly filed

the suit for infringement of copyright. Therefore, there is no clear and genuine cause of action made out by the appellants and it is only a case of clever drafting creating an illusion of a cause of action which has to be nipped in the bud. Therefore, the suit of the appellants is rightly rejected as per the HC-NIC Page 38 of 40 Created On Sat Apr 09 02:53:33 IST 2016 provisions under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure, 1908.

38. The submission, of the learned counsel for the respondents, require to be accepted, that the appellants have relied upon the documents which do not support their own pleadings. As the appellants themselves have pleaded in the plaint in Para-25 that Doug Boring and V Pitchford are the authors of some alleged artistic work. The appellants have failed to show how the said artistic work is transferred to any of the present appellants. That the appellants have failed to show the link between all the three appellants. That the license agreement is of 05/08/2007 whereby the Conair company is giving license to appellant no.3 and as per the documents relied by the appellants about the incorporation of the joint venture is after the license agreement therefore also all documents are completely deception."

10. In the above judgment, the court is of the view that the suit based on a false claim is nothing but clear case of abuse of process of law and the appellants have not disclosed the clear right to sue and also not disclosed the real cause of action. As per the plaint and documents relied on by the appellants, the appellants have obtained the same artistic work under Patent-Design in USA, but not in India. Therefore, the allegation

made in the plaint if taken on its face value would not disclose any cause of action.

11. Here in this case, the facts are different for the reason that father of ancestors of plaintiffs had purchased the property under simple sale deed which is within Vellapalli village of Jaipur mandal, Adilabad District which is part of Telangana and it can be validated as per the provisions of Telangana Area Agricultural Lands Act, subject to compliance of certain requirements under the Act. If the simple sale deed is validated and ancestors continued and later the property was included in the standard holdings of the ancestors of the petitioners/plaintiffs and therefore, the plaint discloses cause of action, more particularly, right to sue, thereby the contention that the plaint does not disclose cause of action is incorrect and by exercising power under Order VII Rule 11 of CPC, the plaint cannot be rejected.

12. The other ground is that the suit is barred by limitation. The suit is filed for declaration of title and recovery of possession. The limitation under Article 58 of Limitation Act is three years from the date of the right to sue first accrued. In the present case, the right to sue first accrued on the date of denial of title by the plaintiffs/respondents on 30.12.2015 and when the defendants threatened to dispossess the plaintiffs illegally. So this incident of denial of title creating cloud on the title of the plaintiffs/respondents would give rise to cause of action within the meaning of right to sue under Article 58 of Limitation Act. Even otherwise the limitation is not a ground and that the limitation is a mixed question of fact and law and the same is not a ground to reject the plaint based on law declared by Apex Court in VAISH AGGARWAL PANCHAYT v.INDER KUMAR AND OTHERS³. By applying the principle in the aforesaid decision,

³ AIR 2015 SUPREME COURT 3357

the question of limitation cannot be decided to reject the plaint since it is a mixed question of fact and law. Therefore, I find no ground to reject the plaint at this stage. Hence, I find no merits in the revision petition and it is liable to be dismissed.

13. In the result, the revision petition is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:10-07-2017
Ccm



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



C.R.P. NO. 5257 OF 2016

Date:10.07.2017

ccm